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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 SEMANU MILO,
12 CDCR #P-78110

13 Plaintiff,

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15 vs.

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17 KEVIN FULLNER et al.,
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19 Defendant.
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Civil No. 07-2255 JM (PCL)

ORDER:

(1) **DISMISSING CIVIL ACTION
AS DUPLICATIVE PURSUANT TO
28 U.S.C. § 1915A(b)(1); and**

(2) **DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS* AS
MOOT
[Doc. No. 4]**

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23 Plaintiff, a state inmate currently incarcerated at Salinas Valley State Prison located in
24 Soledad, California and proceeding pro se, has filed a civil rights Complaint pursuant to 42
25 U.S.C. §1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a);
26 instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C.
27 § 1915(a) [Doc. No 4].
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I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)

The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A, obligates the Court to review complaints filed by anyone “incarcerated or detained in any facility who is accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after docketing” and regardless of whether the prisoner prepays filing fees or moves to proceed IFP. *See* 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

Plaintiff’s instant Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C. § 1915A(b)(1) because it appears to be duplicative of a case Plaintiff has already litigated. Plaintiff’s Complaint contains the identical claims and defendants that are found in *Milo v. Garcia*, S.D. Cal. Civil Case No. 04-0965 BTM (BLM). A court “may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.” *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

A prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it “merely repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations omitted). Because Plaintiff has already litigated the same claims against the same defendants presented in the instant action in *Milo v. Garcia*, S.D. Cal. Civil Case No. 04-0965 BTM (BLM), the Court hereby **DISMISSES** Civil Case No. 07-2255 JM (PCL) pursuant to 28 U.S.C. § 1915A(b)(1). *See Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d at 446 n.1.

II. Conclusion and Order

Good cause appearing, **IT IS HEREBY ORDERED** that:

Plaintiff’s Complaint in Civil Case No.07-2255 JM (PCL) is **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915A(b)(1).


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1 Plaintiff's Motion to Proceed IFP [Doc. No. 4] is **DENIED** as moot.

2 The Clerk shall close the file.

3 **IT IS SO ORDERED.**

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5 DATED: March 3, 2008

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7 Hon. Jeffrey T. Miller
8 United States District Judge
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